

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT HOSSFELD, on behalf of)
himself and all others similarly situated, and)
ISMAEL SALAM, individually,) Case No. 1:18-cv-1061
)
Plaintiffs,) Hon. Charles. R Norgle
)
v.) Magistrate Gabriel A. Fuentes
)
LIFEWATCH, INC.,)
)
Defendant.)

JOINT INITIAL STATUS REPORT

Plaintiffs Robert Hossfeld and Ismael Salam (“Plaintiffs”) and Defendant Lifewatch, Inc. (“Defendant”) (collectively the “Parties”) submit this joint status report in advance of the July 18, 2019 status conference before Magistrate Judge Gabriel A. Fuentes.

1. Description of Claims and Relief Sought

A. Claims and Defenses

Plaintiffs allege that Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, by engaging in a robocall campaign designed to sell medical alert systems. Defendant has raised several defenses to the case on the merits. Judge Norgle granted class certification in September 2016, ECF Doc. 121, certifying a Class comprised of “[a]ll individuals in the United States who received one or more phone calls directed to a telephone number assigned to a cellular service using an automated telephone dialing system or an artificial or prerecorded message made by, on behalf of, or for the benefit of Lifewatch from October 16, 2013 through the present.”

B. Relief Sought and Damages

Plaintiffs seek statutory damages for each TCPA violation under 47 U.S.C. § 227(b)(3)(B), which permits \$500 for each violation (\$1,500 if willful or knowing).

2. Referral

Judge Norgle's magistrate referral encompasses all pretrial matters. *See* ECF Doc. 102.

3. Discovery Schedule

Fact discovery is completed. The Parties are engaged in expert discovery. *See* ECF Doc. 197. Plaintiff has not designated and will not rely upon any expert witness(es). Defendant's disclosures are due July 29, 2019, and expert depositions are to be completed by August 30, 2019. *Id.*

4. Consideration of Issues Concerning ESI

Though the Parties have not entered into a formal agreement regarding the exchange of ESI, as noted above, fact discovery is completed and the Parties do not anticipate any future issues related to the production or exchange of electronically-stored information.

5. Settlement

The Parties have engaged in periodic settlement discussions throughout the litigation of this case, including with the help of Magistrate Schenkier. These efforts have not been successful to date, and the Parties do not believe a settlement conference would be productive at this time, for the reasons explained in Section 7, below.

6. Magistrate Judge Consent

The Parties do not unanimously consent to conduct the trial of this matter before Judge Fuentes.

7. Pending Motions

There are no pending motions. However, Defendant settled a consumer fraud and pre-recorded telemarketing case with the Federal Trade Commission on July 1, 2019. In accordance with that settlement, which includes broad injunctive relief and a \$2 million monetary payment, money paid will be deposited into a fund used for equitable relief, including consumer redress. In view of this settlement and its terms, Defendant intends to move for de-certification of the Class.

Plaintiffs are currently reviewing the terms of the settlement between Defendant and the FTC and conferring with counsel for the involved parties in order to evaluate the scope and propriety of the relief the settlement makes available to the Class in this case. That evaluation will inform Plaintiffs' response to Defendant's anticipated motion to decertify.

8. Trial

Plaintiffs request a jury trial of this matter. Following resolution of Defendant's motion for decertification, both Parties intend to move for summary judgment. The matter will be ready for trial upon

resolution of those dispositive motions.

Dated: July 15, 2019

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